

AGREEMENT BETWEEN ATLAS FOSTER REAL ESTATE HOLDINGS, LLC AND THE
CITY OF DURHAM FOR BUILDING IMPROVEMENT INCENTIVES FOR ECONOMIC
DEVELOPMENT ACTIVITIES

This Agreement is made and entered into this the ____ day of _____, 2011 by and between AnnMc Multimedia Properties, LLC (the "Company"), a limited liability company organized and existing under the laws of the State of North Carolina, and the City of Durham (the "City"), a North Carolina municipal corporation.

BACKGROUND.

(a) Section 2(g) of the Resolution Establishing an Economic Development Financial Assistance and Incentive Policy for Job Creation, Job Retention and Capital Investment, adopted by the City Council on April 4, 2011 (the "Resolution"), specifies that the City Council may appropriate economic development incentives for project reimbursement for certain private capital investment projects. Pursuant to the Resolution, certain capital investment improvements to buildings made within the Downtown Development Tier, Parrish Street Project Area, the CDA (outside the Downtown Development Tier) or the Targeted UGA Areas, may be eligible for economic incentives provide that such eligible projects are completed within one year after approval of an incentive agreement.

(b) Section 2(g)(ii)(A) of the Resolution further specifies that the incentive may be up to thirty-three percent (33%) of the cost of the qualifying expenditures but not exceeding \$75,000.00 if the project is located in the Downtown Development Tier.

(c) By authorizing the execution of this Agreement, the City Council of the City of Durham finds that in order to aid and encourage the revitalization and redevelopment of Downtown Development Tier, it is necessary and desirable to provide for the renovation of the building and property at 112 Hunt Street, Durham, NC and that the proposed renovation will contribute significantly to economic conditions within the Downtown Development Tier in Durham, increase taxable property in the City and increase business prospects.

(d) The quality of the proposed development meets the economic goals, the design control criteria as reflected in the Resolution, and the land-use goals of the City Council.

IT IS AGREED AS FOLLOWS:

1. Definitions.

(a) "Property" is the land and building(s) located at 112 Hunt Street, in Durham, N.C., identified more precisely as Durham County Parcel Identification Number 0831-05-09-2071.

(b) "Project" shall be the building improvements presented by the Company in the application dated October 7, 2011, which application is hereby incorporated by reference, and which project, as generally described, will renovate vacant space at 112 Hunt Street to bring it up to retail and office rental readiness. The improvements will improve and restore a vacant environmentally impaired building, providing 5,040 square feet of retail space. The owner anticipates that the building will include a film/video/audio production facility with a live performance area, a beauty salon and a wine bar.

(c) “Qualifying Capital Investment” are any of the following capital investments made by the Company, without limitation: window replacements, installations of walls, painting, installation of support mechanisms, HVAC, electrical systems, plumbing stairs and related building renovations and other type of Capital Investment as defined by Section 3(b) of the Resolution.

(d) “Approval Date” is the date when the City Council approves this Agreement and authorizes the Manager to execute the Agreement.

2. (a) Prerequisites to Payments. If the Company, in its discretion, makes expenditures that meet the definition of Qualifying Capital Investment within one year of the Approval Date, for a project begun no later than 9 months following the Approval Date, the City shall make payments to the Company as provided in Section 2(b) (*Schedule of Payments*). However, before the City shall be obligated to make any payments pursuant to Section 2(b), the Company shall have:

(i) (*Minimum Expenditures*)—Company shall make the Qualifying Capital Investment to the property totaling at least \$238,000.00 as necessary to substantially complete the Project.

(ii) (*Certificate of Compliance*) obtained from the Durham City-County Inspections Department a certificate of compliance (referred to below as “CO”) allowing occupancy or use, for retail, office and/or commercial uses, of the area renovated to qualify under Section 2(a)(i) (*Minimum Expenditures*) above;

(iii) (*Accounting*) provided to the City a full and accurate accounting, with such detail as the City may reasonably require, of all expenditures comprising the Qualifying Capital Investment; and

(iv) (*Certification*) delivered to the City a written certification, in such form as the City reasonably requires that the Company has satisfied all applicable requirements of Section 2 of this Agreement.

(b) Schedule of Payments. The City shall pay the Company an amount of \$62,000.00 within 60 days after the Company has complied with all of the conditions in Section 2(a) (*Prerequisites to Payments*).

3. Delay of Payment. If the City has reason to believe that any statement or certification made by the Company pursuant to this Agreement, including but not limited to Section 2 is not accurate, a payment otherwise appearing to be due shall be delayed for a reasonable time for a determination of the facts, provided that the City shall send notice to the Company of the grounds for that belief.

4. Time of Essence for All Dates and Deadlines; 18-Month Expiration. Time is of the essence for all dates and deadlines in this Agreement. Notwithstanding any other provision contained in this Agreement, the City shall have no obligation to, and shall not make any payment to the Company pursuant to this Agreement on a date more than eighteen months after the Approval Date.

5. Addresses. The payments by the City pursuant to this Agreement shall be mailed to:

Gordon M. McBean
AnnMc Multimedia Properties, LLC
2034 Battlewood Road
Apex, NC 27523

or to such other address as the Company may specify by written notice to the City. When a notice is required or permitted by this Agreement, it shall be effected by written notice to the City by delivery to:

Director
Office of Economic & Workforce Development
City of Durham
101 City Hall Plaza, Durham NC 27701

and to the Company by delivery to:

Gordon M. McBean
AnnMc Multimedia Properties, LLC
2034 Battlewood Road
Apex, NC 27523

Either party may change the address by giving notice of the change to the other party. Notice is deemed received (i) when it is handed to an employee of the other party located at the address stated in this section, or (ii) in case of mailing, on the third business day after it is deposited in a post-paid envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

6. EEO. Nondiscrimination.

(a) EEO Provisions. For purposes of these EEO Provisions, the Company is the "Contractor." During the performance of this Agreement the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend

this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(b) THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX, AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

7. Assignment. The Company shall not assign this Agreement in whole or in part without written consent of the other. The City hereby consents to the assignment of all of the Company's undivided interest in this Agreement to a wholly-owned subsidiary of the Company.

8. Modifications by Written Agreement; No Other Current Agreements; Waivers; Performance of Government Functions; References to Sections. This Agreement may be modified only by a written agreement executed by both parties hereto. This Agreement sets forth the entire agreement between the City and the Company and supersedes any and all other agreements on this subject between the parties. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions. This Agreement is intended for the benefit of the City and the other party executing this Agreement and not any other person. Unless the context requires otherwise, references in this Agreement to Sections are references to Sections contained in this Agreement. Section titles, including references to Sections with their titles (as in "Section X(a)(i)(*title of X(a)(i)*)", is for convenience only, and the titles are not intended to affect the meaning of this Agreement.

9. Default. Termination. If the Company fails to fulfill any of its obligations under this Agreement, and fails to correct such failure within 30 days of receiving notice of such failure from the City, or if the Company makes any materially false statement in any statement or certification referred to in this Agreement, the City may hold the Company in default and (a) terminate this Agreement and make no further payments to Company and (b) recover all prior payments and reasonable direct expenses incurred by the City in connection with this Agreement, including reasonable attorney's fees.

10. Forum and Choice of Law. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

11. Indemnification.

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item. "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

12. Agreement Subject to Resolution. This Agreement is made pursuant to the Resolution, and it is subject to the procedures, limitations, and restrictions set forth in the Resolution.

13. City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by the City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Grantee have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

preaudit certificate

By: _____

*Agreement between AnnMc Multimedia Properties, LLC and the City of Durham for Building Improvement
Incentives for Economic Development Activities*

ANNMc MULTIMEDIA PROPERTIES, LLC

By: _____
Manager

State of _____

ACKNOWLEDGMENT BY
ANNMc MULTIMEDIA PROPERTIES, LLC

County of _____

I, a notary public in and for said county and state, certify that _____
personally (1) appeared before me this day, (2) stated that he or she is a manager of AnnMc Multimedia Properties,
LLC a limited liability company organized and existing under the laws of the State of North Carolina, (3)
acknowledged that the foregoing contract or agreement with the City of Durham carries on the company's business
in the usual way, and (4) acknowledged the due execution of the contract on behalf of the company. This the
_____ day of _____, 20_____.

My commission expires:

Notary Public